A

KERAJAAN NEGERI PAHANG DARUL MAKMUR & ANOR

v.

B

SERUAN GEMILANG MAKMUR SDN BHD

COURT OF APPEAL, PUTRAJAYA
HASAN LAH JCA
ABDUL MALIK ISHAK JCA
ABU SAMAH NORDIN JCA
C [CIVIL APPEAL NO: C-01-59(A)-2007]
3 AUGUST 2008

CIVIL PROCEDURE: *Appeal - Record of appeal - Application for extension of time to file - Appeal record not filed on time due to* D *application to amend case number in notice of appeal first - Whether appeal record application should be filed first before amendment application - Whether merits of appeal shown - Rules of the Court of Appeal 1994, r. 18(7) - Court of Appeal's Practice Direction No. 1 of 1996*

E There were two applications before the court. The first application was by the applicants/appellants to amend their notice of appeal by substituting the case number 22-28-2003 with case number 21-9-2002 and also for an extension of time to file the appeal record. The second application was by the respondent to dismiss the F applicants' appeal on the ground that they failed to file the record of appeal within time as stipulated under r. 18(7) of the Rules of the Court of Appeal 1994. The applicants submitted that their failure to file the record of appeal within time was because they had to amend the case number in the notice of appeal first. Further, the High Court had dismissed their application for G amendment. The respondent submitted, *inter alia*, that not only did the applicants fail to comply with r. 18(7) of the Rules of the Court of Appeal 1994 but also Practice Direction No. 1 of 1996.

H **Held (dismissing applicants' application for extension of time to file appeal record and allowing respondent's application to dismiss appeal)**
Per Hasan Lah JCA:

I **(1)** The explanation given by the applicants for the failure to file and serve the record of appeal within the required time could hardly be described as an acceptable explanation for the delay. What the applicants should have done was to file the record

of appeal first and then applied for the amendment after that. As such, the applicants should not have waited for the amendment to be made first before filing the record of appeal. (para 16)

(2) The affidavit-in-support of the applicants' application did not state the merits of the appeal. The applicants did not mention the factual circumstances surrounding the cause of action leading to the order appealed against. It would have been sufficient if they had at least exhibited the statement of claim and the statement of defence in their affidavit-in-support so as to give their counsel to submit on the merits of the appeal. It is trite that in an application for extension of time to file the record of appeal the applicants have to show that they have at least an arguable case in their appeal. Accordingly, the applicants' application for extension of time was devoid of any merit. (para 17)

Per Abdul Malik Ishak JCA:

(1) The failure to file the appeal record on time would attract the irresistible inference that there was no reasonable diligence exercised by the appellants. Such laxity, unless explained by affidavit, could not be excused by the court. (para 28)

(2) The affidavit-in-support of the applicants' application failed to show sufficient materials to support the submission that there were merits in the appeal. The affidavit failed to mention what the appeal was all about. It also failed to mention where the High Court had gone wrong. (para 29)

(3) In order to comply with r. 18(7) of the Rules of the Court of Appeal 1994, the record of appeal should have been filed within the stipulated time period and should there be a need to rectify the record of appeal it could be done later. It was apparent that the appellants did not pursue actively with vigour and vitality their appeal. Accordingly, there was a blatant disregard by the appellants of r. 18(7) of the Rules of the Court of Appeal 1994. (paras 30 & 33)

(4) Practice Direction No 1 of 1996 dealt with the extension of time to file the record of appeal in cases where the notes of proceedings were not available. Recognition has been accorded to practice directions in the past by this court (see *Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang & Anor* and *Raja Guppal Ramasamy v. Sagaran Pakiam*). (para 34)

[Application to amend case number in notice of appeal allowed.]

Bahasa Malaysia *Translation Of Headnotes*

Terdapat dua permohonan di hadapan mahkamah. Permohonan pertama adalah oleh pemohon/perayu bagi meminda notis rayuan mereka dengan menggantikan nombor kes dari nombor 22-28-2003 kepada nombor 21-9-2002 dan untuk lanjutan masa memfailkan rekod rayuan. Permohonan kedua adalah oleh responden untuk membatalkan rayuan perayu atas alasan bahawa perayu gagal memfailkan rekod rayuan dalam tempoh masa seperti yang ditetapkan oleh k. 18(7) Kaedah-Kaedah Mahkamah Rayuan 1994. Pemohon berhujah bahawa kegagalan mereka memfailkan rekod rayuan dalam tempoh masa yang ditetapkan adalah disebabkan mereka terpaksa terlebih dahulu meminda nombor kes di dalam notis rayuan. Selain itu, Mahkamah Tinggi telah menolak permohonan mereka untuk meminda. Responden antara lain berhujah bahawa pemohon bukan sahaja gagal mematuhi k. 18(7) Kaedah-Kaedah Mahkamah Rayuan 1994 tetapi juga Arahan Amalan No. 1 1996.

Diputuskan (menolak permohonan pemohon untuk lanjutan masa untuk memfail rekod rayuan dan membenarkan permohonan responden untuk membatalkan rayuan)

Oleh Hasan Lah HMR:

(1) Penjelasan yang diberikan oleh pemohon atas kegagalan memfail dan menyerahkan rekod rayuan dalam tempoh yang ditetapkan bukan satu penjelasan yang dapat diterima. Apa yang pemohon seharusnya melakukan adalah untuk memfail rekod rayuan dahulu dan selepas itu memohon untuk meminda. Ertinya, mereka tidak harus menunggu sehingga pindaan dibuat sebelum memfailkan rekod rayuan.

(2) Afidavit sokongan bagi permohonan pemohon tidak menyatakan merit rayuan. Pemohon langsung tidak menyebut mengenai halkeadaan faktual yang meliputi kausa tindakan yang membawa kepada perintah yang dirayui. Ianya memadai jika

mereka sekurang-kurangnya mengemukakan pernyataan tuntutan dan pernyataan pembelaan dalam afidavit sokongan mereka bagi membolehkan peguam mereka berhujah atas merit rayuan. Adalah nyata bahawa dalam suatu permohonan lanjutan masa untuk memfail rekod rayuan pemohon wajib menunjukkan bahawa mereka sekurang-kurangnya mempunyai kes yang boleh dihujahkan dalam rayuan mereka. Oleh yang demikian, permohonan pemohon untuk lanjutan masa tidak bermerit.

Oleh Abdul Malik Ishak HMR:

(1) Kegagalan memfail rekod rayuan dalam tempoh masa menarik inferens tidak dapat tidak bahawa pemohon gagal menunjukkan ketelitian yang munasabah. Kelalaian sedemikian, kecuali diperjelaskan melalui afidavit, tidak boleh dimaafkan oleh mahkamah.

(2) Afidavit sokongan permohonan pemohon tidak mempunyai bahan-bahan yang mencukupi untuk menyokong hujah bahawa rayuan adalah bermerit. Afidavit gagal menyebut mengenai apakah rayuan itu sebenarnya. Ia juga gagal menyebut di mana Mahkamah Tinggi melakukan kesilapan.

(3) Untuk mematuhi k.18(7) Kaedah-Kaedah Mahkamah Rayuan 1994, rekod rayuan haruslah difailkan dalam tempoh masa yang ditetapkan dan jika terdapat keperluan untuk meminda rekod rayuan itu ia boleh dibuat kemudian. Adalah jelas bahawa pemohon tidak menangani rayuan mereka dengan penuh daya dan tenaga. Oleh itu, terdapat ketidakpatuhan yang terang-terangan terhadap k. 18(7) Kaedah-kaedah Mahkamah Rayuan 1994.

(4) Arahan Amalan No 1 1996 menyangkuti lanjutan masa untuk memfail rekod rayuan di mana nota prosiding tidak diperolehi. Pengiktirafan kepada arahan amalan telah diberi oleh mahkamah ini di masa-masa yang lalu (lihat *Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang & Anor* dan *Raja Guppal Ramasamy v. Sagaran Pakiam*).

[Permohonan untuk meminda nombor kes dalam notis rayuan dibenarkan.]

Cases(s) referred to:

Alloy Automotive Sdn Bhd v. Enkei Automotive Co Ltd & Anor [1997] 2 CLJ 392 CA ***(refd)***

Hohn v. United States 524 US 236 ***(refd)***

Ooi Bee Tat v. Tan Ah Chim & Sons Sdn Bhd & Anor and Another Appeal [1995] 4 CLJ 484 SC ***(refd)***

Raja Guppal Ramasamy v. Sagaran Pakiam [1999] 2 CLJ 972 CA ***(refd)***

Ratnam v. Cumarasamy & Anor [1964] 1 LNS 237 ***(refd)***

Robertson v. Daimler Chrysler Corp 641 NW 2d 567 ***(refd)***

Safety Insurance Co Ltd v. Wong Choo Yong [1970] 1 LNS 141 ***(refd)***

Tan Siew Peng v. OCBC Bank (M) Bhd [1998] 2 CLJ 684 CA ***(refd)***

Warinco v. Samor SpA [1979] 1 Lloyd's Rep 450 ***(refd)***

Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang & Anor [1996] 2 CLJ 628 CA ***(refd)***

Legislation referred to:

Rules of the Court of Appeal 1994, rr. 18(7), 21(3), 93

Practice Direction No 1 of 1996

Other source(s) referred to:

Black's Law Dictionary, 7th edn, 1999, p 1414

For the appellants - Dato' Mat Zara'ai Alias, State Legal Adviser

For the respondent - Mura Raju (Rajoo D Moorthy with him); M/s Peter Lai, Rajoo & Aiza

[Appeal from High Court, Kuantan; Civil Suit No: 22-28-2003]

Reported by Usha Thiagarajah

JUDGMENT

Hasan Lah JCA:

Introduction

[1] The applicants in this case are the defendants in the suit filed by the respondent, the plaintiff in the High Court.

[2] By a notice of motion dated 1 October 2007 (encl. 6a) the applicants applied for the following orders:

(a) that the notice of appeal filed by the applicants on 1 June 2007 be amended by substituting case number "22-28-2003" with case number "21-9-2002";

(b) that the applicants be granted extension of time to file the appeal record.

[3] The said application was supported by an affidavit affirmed by the learned State Legal Adviser for the state of Pahang. In his affidavit he explained that the correct case number is 21-9-2002 and not 22-28-2003 as stated in the notice of appeal. The mistake was due to the fact that case number 22-28-2003 was also filed by the plaintiff in respect of the same land which was the subject-matter in case number 21-9-2002.

[4] The applicants had made an application to the High Court to amend the said notice of appeal but it was dismissed by the High Court on the ground that it had no jurisdiction to hear that application.

[5] It was further stated in the applicants' affidavit that due to the mistake in the case number the applicants could not file the appeal record within the stipulated time because the applicants had to make application to amend the case number first.

[6] The affidavit did not mention anything about the nature of the respondent's claim in case number 21-9-2002 and the defence put up by the applicants in their statement of defence. It did not say whether the applicants had a good defence to the respondent's claim in that case.

[7] The applicants' application was filed on 1 October 2007. Prior to that, on 11 September 2007, the respondent had filed an application, also by notice of motion (encl. 4a), for an order that the applicants' notice of appeal dated 1 June 2007 be struck off and the applicants appeal be dismissed on the ground that the applicants had failed to file the appeal record within the time stipulated under r. 18(7) of the Rules of Court of Appeal 1994.

[8] Both the applications were fixed for hearing on the same day ie, 13 February 2008. After hearing submissions made by both parties we unanimously dismissed the applicants' application for extension of time to file the appeal record with no order as to costs of the application and we allowed the respondent's application that the notice of appeal filed by the applicants be struck out and the applicants' appeal be dismissed with costs.

Issues Raised By The Respondent

[9] In opposing the applicants' application for extension of time to file the appeal record learned counsel for the respondent submitted that it should be dismissed for the following reasons:

A (a) The applicants did not give good or enough reason for the delay in filing the appeal record. Mistake made by the counsel and the application for amendment to the case number were not good reasons;

B (b) In the affidavit-in-support of the application the applicants did not give sufficient materials to show that there were merits in their appeal;

(c) The applicants did not comply with the requirements of r. 18(7) of the Rules of the Court of Appeal 1994 and the C Practice Direction of No. 1 of 1996 dated 5 February 1996 issued by the President of the Court of Appeal.

The Law

D **[10]** Rule 18(7) of the Rules of the Court of Appeal 1994 provides:

> (7) The memorandum and copies above referred to which, together shall be called the record of appeal, shall be filed at the Registry within eight weeks after the entry of the appeal or within E such further time as the Court may allow.

Rule 93 of the said Rules provides:

> The Court or a Judge shall have power to enlarge or abridge the time appointed by these Rules, or fix by an order enlarging time, F for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until the expiration of the time appointed or allowed:
>
> G ...

Rule 21(3) of the said Rules provides:

> (3) If any part of record of appeal is not filed, or any copy thereof is not supplied within the prescribed time, and no sufficient ground is shown for the delay, the appeal may be dismissed. H

[11] The Practice Direction No. 1 of 1996 issued by the President of the Court of Appeal deals with the extension of time to file the record of appeal in cases where the notes of proceedings were not available. In *Raja Guppal Ramasamy v. I Sagaran Pakiam* [1999] 2 CLJ 972 this court held that Practice

Direction No.1 of 1996 has been framed to regulate the procedure governing the filing of appeal records. It must be strictly adhered to so that there is a systematic and consistent procedure governing the filing of appeal records.

[12] With regard to the mistake of a solicitor or his clerk Haidar JCA (as he then was) made the following observation in *Raja Guppal a/l Ramasamy*'s case:

> As stated by this court in *Soh Keng Hian v. American International Assurance Co Ltd* [1995] 1 LNS 228, the mistake of a solicitor is a factor which the court may now take into account when deciding whether to grant an extension of time. Though *Soh Keng Hian*'s case relates to an extension of time to file a notice of appeal, we are of the view that the same should apply to application for extension of time to file record of appeal as it relates to the exercise of the discretionary power of the court."

[13] In *Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang* [1996] 2 CLJ 628 this court has stated that the person making the application for extension of time must mention in his affidavit-in-support the factual circumstances surrounding the cause of action leading to the order appealed against. At p. 630 Siti Norma Yaakob JCA (as she then was) said:

> We also took note of the fact that the affidavit in support makes no mention of the factual circumstances surrounding the cause of action leading to the order appealed against. It was only before us that counsel attempted to remedy the deficiency of his affidavit by offering to state that the appeal arose out of a Rent Tribunal matter, for which prohibition had not been granted. It would have assisted us if counsel had at least alluded to some facts or law in his affidavit so as to show at least an arguable case. The failure to do so coupled with the delay of four weeks for which no acceptable explanation had been given, left us with no choice but to dismiss the application with costs.

On the same issue in *Safety Insurance Co. Ltd v. Wong Choo Yong* [1971] 1 MLJ 16 Gill FJ said at p. 168 when the Federal Court refused to exercise its discretion to allow extension of time to file record of appeal:

> A more serious ground for refusing the application was that nothing had been said about the merits of the appeal. That was our other reason for refusing to exercise our discretion in favour of the appellants.

Finding Of This Court

[14] The granting or dismissal of an application for extension of time is very much a discretionary matter but that discretion has to be exercised judiciously. In *Tan Siew Peng v. OCBC Bank (M) Bhd* [1998] 2 CLJ 684, Gopal Sri Ram JCA made the following observation:

> There is no doubt that this court has power, exercisable at its discretion, to extend the time limited for the filing or service of any document or the doing of any act under the Rules of the Court of Appeal 1994 ('the Rules'). And it is trite that the burden is upon an applicant who seeks an extension of time to make available sufficient material upon which this court may exercise discretion in his favour.

[15] In the instant case the reason given by the applicants for not filing the record of appeal within time was that they could not file the record of appeal earlier because they had to amend the case number in the notice of appeal. Their application to the High Court to amend the case number was made on 9 July 2007 and on 6 August 2007 the application was dismissed by the High Court. Only on 1 October 2007 the applicants filed this application to this court.

[16] We were of the view that the explanation given by the applicants for the failure to file and serve the record of appeal within the required time could hardly be described as an acceptable explanation for the delay. What the applicants should have done was to file the record of appeal first and then applied for the amendment after that. As such the applicants should not have waited for the amendment to be made first before filing their record of appeal.

[17] A more serious ground for refusing the applicants' application was that nothing was mentioned about the merits of appeal in their affidavit-in-support. They did not mention the factual circumstances surrounding the cause of action leading to the order appealed against. It would had been sufficient if they had at least exhibited the statement of claim and the statement of defence in their affidavit-in-support so as to give the basis for their counsel to submit on the merits of their appeal. It is trite that in an application for extension of time to file record of appeal the applicants have to show that they have at least an arguable case in their appeal.

[18] Accordingly, we were of the unanimous view that the applicants' application for extension of time was devoid of any merit. This was not a suitable case for us to exercise our discretion in favour of the applicants. We therefore refused it even though we allowed the applicants' application to amend the case number in their notice of appeal. We did not make any order with regard to the costs of the application.

[19] As the applicant's application for extension of time had been refused, it followed that there was no competent appeal before us. We therefore allowed the respondent's application that the applicants' appeal be dismissed with costs.

Abdul Malik Ishak JCA:

The Salient Facts

[20] There were two applications before us. By way of a notice of motion dated 1 October 2007 as per encl. 6a, the applicants/appellants (hereinafter referred to as the "appellants") sought by way of prayer (a) for an order that the notice of appeal filed by the appellants on 1 June 2007 be amended by substituting case number "22-28-2003" with case number "21-9-2002". Enclosure 6a also sought by way of prayer (b) for an order that the appellants be granted an extension of time to file the appeal record with an ancillary order for costs to be in the cause as reflected in prayer (c).

[21] Whereas encl. 4a was the plaintiff/respondent's (hereinafter referred to as the "respondent") application by way of a notice of motion dated 11 September 2007 for an order that the appellants' notice of appeal dated 1 June 2007 be struck off and the appellants' appeal be dismissed with costs payable by the appellants to the respondent on the ground that the appellants failed to file the record of appeal within the time stipulated under r. 18(7) of the Rules of the Court of Appeal 1994.

[22] The learned State Legal Adviser of Pahang argued that if the appellants were successful in regard to encl. 6a, then there was no necessity for encl. 4a to be argued.

[23] The learned counsel for the respondent agreed that prayer (a) of encl. 6a be allowed – and this was in relation to the amendment by way of substituting case number "22-28-2003" with case number "21-9-2002". It was a magnanimous concession on the part of the learned counsel for the respondent.

[24] However, prayer (b) of encl. 6a was disputed and that would necessarily include prayer (c) of encl. 6a.

Analysis

[25] The reason advanced by the appellants for not filing the record of appeal within time was that they could not file the record of appeal earlier because they said that they had to amend the case number in the notice of appeal first. The appellants said that they had filed an application to amend the case number in the High Court but the High Court refused to grant the amendment on the ground that it had no jurisdiction whatsoever to hear the application.

[26] Another reason advanced by the appellants was this. That due to the mistake in the case number, the appellants were unable to file the appeal record in time bearing in mind that the application to amend the case number had to be made first.

[27] The learned counsel for the respondent strenously opposed the application by the appellants for an extension of time to file the appeal record. The arguments for the respondent may be summarised as follows:

(a) that the registry of this court registered the appeal and informed the parties by letter dated 27 July 2007 as reflected in exh. "LS3" annexed to the affidavit of Lee Sin that was affirmed on 11 September 2007 about the appeal;

(b) that on 27 July 2007, this court became seised of jurisdiction in regard to the appeal and as soon as that happens the application for the amendment to the case number should have been made to this court on 27 July 2007 and not on 1 October 2007;

(c) that there was non-compliance by the appellants with r. 18(7) of the Rules of the Court of Appeal 1994 as well as Practice Direction No: 1 of 1996 dated 5 February 1998 issued by the President of the Court of Appeal; and, finally,

(d) that the appellants failed to provide sufficient materials to support their application for prayer (b) of encl. 6a and what was averred did not reflect the merits of the appeal.

[28] Should we show our indulgence to the appellants? The failure to file the appeal record on time would attract the irresistible inference that no reasonable diligence was exercised by the appellants. Such laxity unless explained by affidavit cannot be excused by this court (see the case of *Warinco v. Samor SpA* [1979] 1 Lloyd's Rep 450 that was cited with approval by the then Supreme Court in *Ooi Bee Tat v. Tan Ah Chim & Sons Sdn Bhd & Anor and Another Appeal* [1995] 4 CLJ 484, SC).

[29] The affidavit in support of encl. 6a failed to show sufficient materials to support the submission that there were merits in the appeal. The affidavit failed to mention what the appeal was all about. It also failed to mention where the High Court had gone wrong.

[30] The appellants submitted that there was a mistake in the notice of appeal that should be rectified first before the record of appeal was filed. With respect, in order to comply with r. 18(7) of the Rules of the Court of Appeal 1994, the record of appeal should have been filed within the stipulated time period and should there be a need to rectify the record of appeal it could be done later. It is apparent that the appellants did not pursue actively, with vigour and vitality, their appeal.

[31] Even assuming that this court were to accept the explanation by the appellants for the delay in filing the record of appeal, yet as I said earlier that there were no sufficient materials placed before us.

[32] According to the Privy Council case of *Ratnam v. Cumarasamy & Anor.* [1964] 1 LNS 237, that: "The Rules of Court must *prima facie* be obeyed, and in order to justify a court in extending the time during which some step in procedure requires to be taken there must be some material upon which the court can exercise its discretion". There was none here. And since the burden was on the appellants to show sufficient material before this court could exercise its discretion in their favour, we must make a ruling that the appellants failed to discharge their burden (*Tan Siew Peng v. OCBC Bank (M) Bhd* [1998] 2 CLJ 684, CA).

[33] We wholeheartedly agree with the submissions of counsel for the respondent that there was insufficient material placed before us to enable us to exercise our discretion in favour of the appellants. We are of the considered view, that there was a

A blatant disregard by the appellants of r. 18(7) of the Rules of the Court of Appeal 1994 (*Alloy Automotive Sdn Bhd v. Enkei Automotive Co Ltd & Ano*r [1997] 2 CLJ 205, CA).

[34] In regard to the Practice Direction No: 1 of 1996, I have
B this to say. It dealt with the extension of time to file the record of appeal in cases where the notes of proceedings were not available. Recognition has been accorded to Practice Directions in the past by this court. Two case authorities emanating from this court must be cited to show that Practice Directions must be
C strictly adhered to, namely:

(a) *Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang & Anor* [1996] 2 CLJ 628, CA; and

(b) *Raja Guppal Ramasamy v. Sagaran Pakiam* [1999] 2 CLJ 972,
D CA.

[35] The principle of *stare decisis* must be given prominence and be put on a high pedestal. Litigants expect certainty in the law and this court must deliver that certainty, to all and sundry, by
E following the previous decisions of this court. Consistency and predictability in the law are two famous hallmarks of the doctrine of *stare decisis* and no one can dispute it. In short, like cases will be treated alike.

F **[36]** The doctrine of *stare decisis* has been defined in many ways and giving rise to the same meaning. It is a very interesting discourse. It has been defined, refined and explained:

(a) by *Black's Law Dictionary*, 7th edn, 1999 at p. 1414 as:

G > The doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation". See PRECEDENT; NON QUIETA MOVERE. Cf. RES JUDICATA; LAW OF THE CASE.
>
> > The rule of adherence to judicial precedents finds its
> H expression in the doctrine of *stare decisis*. This doctrine is simply that, when a point or principle of law has been once officially decided or settled by the ruling of a competent court in a case in which it is directly and necessarily involved, it will no longer be considered as open to
> I examination or to a new ruling by the same tribunal, or by those which are bound to follow its adjudications, unless it

> be for urgent reasons and in exceptional cases.' William M. Lile et al., *Brief Making and the Use of Law Books* 321 (3d ed. 1914).
>
> The general orthodox interpretation of *stare decisis* … is *stare rationibus decidendis* ('keep to the *rationes decidendi* of past cases'), but a narrower and more literal interpretation is sometimes employed. To appreciate this narrower interpretation it is necessary to refer … to Lord Halsbury's assertion that a case is only authority for what it actually decides. We saw that situations can arise in which all that is binding is the decision. According to Lord Reid, such a situation arises when the *ratio decidendi* of a previous case is obscure, out of accord with authority or established principle, or too broadly expressed'. Rupert Cross & J.W. Harris, *Precedent in English Law* 100-01 (4th ed. 1991).

(b) by Saul Brenner & Harold J. Spaeth, on *Stare Decisis*, 1995, as promoting "efficiency of the court, consistency in the law, fairness and legitimacy"; and

(c) by the case of *Robertson v. Daimler Chrysler Corp*, 641 NW 2d 567, 580 (Mich. 2002) which in turn quoted the case of *Hohn v. United States*, 524 US 236, 251 [1998] as promoting "the even handed, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process".

[37] We are bound to apply the doctrine of *stare decisis* in adjudicating encls. 6a and 4a.

[38] For the reasons as adumbrated above, we unanimously refused the appellants' prayer (b) of encl. 6a. This meant that the appellants' application for extension of time to file the appeal record was dismissed. However, we allowed prayer (a) of encl. 6a in so far as it concerned the case number of the appeal. In the final analysis, there was no order as to costs in regard to L6a.

[39] Since the appellants' application for extension of time was refused by us, there was thus no competent appeal before us (r. 21(3) of the Rules of the Court of Appeal 1994; and *Tan Siew Peng v. OCBC Bank (M) Bhd ((supra)*, at p. 424, last paragraph)). We accordingly allowed the respondent's application in encl. 4a with costs. This meant that the respondent succeeded in striking out the appellants' appeal as reflected in encl. 4a.

A **[40]** This judgment is written in support of the judgment of my learned brother Hasan bin Lah, JCA. And this judgment too has been shown to both my learned brothers Hasan bin Lah and Abu Samah bin Nordin, JJCA and they have expressed their agreement with it.

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